

1 David J. Kaminski, Esq. (State Bar No. 128509)
KaminskiD@cmtlaw.com
2 Stephen A. Watkins, Esq. (State Bar No. 205175)
watkinss@cmtlaw.com
3 CARLSON & MESSER LLP
5959 W. Century Boulevard, Suite 1214
4 Los Angeles, California 90045
(310) 242-2200 Telephone
5 (310) 242-2222 Facsimile

6 Attorneys for Defendant CLIENT SERVICES, INC.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 KAILYN FLOWERS,) CASE NO. **'12CV2748 CAB NLS**
12 Plaintiff,)
13 vs.)
14 CITIGROUP INC. (dba CITI CARDS);)
CLIENT SERVICES INC. and Does 1)
15 through 100,)
16 Defendants.)

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DEFENDANT'S NOTICE OF REMOVAL

19 Defendant CLIENT SERVICES, INC. ("Defendant" or "CSI") hereby files this notice of
20 removal under 28 U.S.C. §1446(a).

21

A. Introduction

- 22 1. Defendants are Client Services, Inc. ("CSI") and Citigroup Inc. ("Citigroup")
23 (collectively "Defendants"); Plaintiff is Kailyn Flowers ("Plaintiff").
- 24 2. Upon information and belief, this case was initially filed on October 11, 2012 in the
25 Superior Court of California, County of San Diego, Case No. 37-2012-000083348-CU-NP-CTL.
26 A true and correct copy of Plaintiff's original Complaint is attached hereto as Exhibit A.
- 27 3. According to the docket in the state court action, Citigroup has not yet appeared.
- 28 4. The Secretary of State website for the state of California does not list an agent for

1 service of process for Citigroup. According to the Secretary of State website for the State of New
 2 York, Citigroup's agent for service of process is CT Corporation System, 111 Eighth Avenue, New
 3 York, New York, 10011.

4 5. On November 12, 2012, counsel for CSI telephoned CT Corporation System. CT
 5 Corporation searched its records for service of Citigroup in the above-captioned action, and did not
 6 locate any record of service. Although CSI was unable to contact Citigroup to obtain its consent to
 7 removal, CSI exercised due diligence in attempting to contact Citigroup.

8 6. On October 12, 2012, CSI was personally served with a Summons and a copy of
 9 Plaintiff's Complaint. A true and correct copy of Plaintiff's Summons and Complaint is attached
 10 hereto as Exhibit A.

11 7. As Defendant CSI was served with Plaintiff's Complaint on October 12, 2012,
 12 Defendant files this notice of removal within the 30-day time period required by 28 U.S.C.
 13 §1446(b)), and as extended via FRCP 6. *See Wells v. Gateways Hosp. & Mental Health Ctr.*, 1996
 14 U.S. App. LEXIS 2287 at *2 (9th Cir. Cal. Jan. 30, 1996); *Williams v. Leonard*, 2003 U.S. Dist.
 15 LEXIS 772 (N.D. Cal. Jan. 13, 2003).

B. Basis for Removal

16 8. Removal is proper because Plaintiff's Complaint involves a federal question. 28
 17 U.S.C. §§1331, 1441(b); *Long v. Bando Mfg. of Am., Inc.*, 201 F.3d 754, 757-58 (6th Cir. 2000);
 18 *Peters v. Union Pac. R.R.*, 80 F.3d 257, 260 (8th Cir. 1996). Specifically, Plaintiff has alleged
 19 claims that arise under 15 U.S.C. § 1692, *et seq.*, for alleged violation of the Fair Debt Collection
 20 Practices Act.

21 9. "Where it appears from the bill or statement of the plaintiff that the right to relief
 22 depends upon the construction or application of the Constitution or laws of the United States, and
 23 that such federal claim is not merely colorable, and rests upon a reasonable foundation, the District
 24 Court has jurisdiction...." *Smith v. Kansas City Title and Trust Co.*, 255 U.S. 180, 41 S. Ct. 243,
 25 65 L. Ed. 577 (1921) (Court upheld federal jurisdiction over the case because the state claim
 26 embraced a federal question). A case may "arise under" federal law for purposes of 28 U.S.C. §
 27 1331 even when a state cause of action is asserted, however, "where the vindication of a right
 28

under state law necessarily turns on some construction of federal law." *Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust for Southern Cal.*, 463 U.S. 1, 27-28, 103 S. Ct. 2841, 77 L. Ed. 2d 420 (1983) The question then is whether plaintiff's "right to relief under state law requires resolution of a substantial question of federal law in dispute.".

5 10. Similarly, to bring a case within (arising-under jurisdiction), a right or immunity
6 created by the Constitution or laws of the United States must be an element, and an essential one,
7 of the plaintiff's cause of action. The right or immunity must be such that it will be supported if the
8 Constitution or laws of the United States are given one construction or effect, and defeated if they
9 receive another. *Gully v. First Nat'l Bank* (U.S. 1936) 299 U.S. 109, 112, 112, 57 S. Ct. 96, 97.

10 11. All pleadings, process, orders, and other filings in the state court action are attached
11 to this notice as Exhibits "A."

12 12. Venue is proper in this district under 28 U.S.C. §1441(a) because this district and
13 division embrace the place where the removed action has been pending.

14 13. Defendant CSI will promptly file a copy of this notice of removal with the clerk of
15 the state court where the action has been pending.

C. Jury Demand

17 14. Plaintiff demands a jury in the state court action. CSI does not demand a jury trial.

D. Conclusion

19 15. Defendant CSI respectfully requests removal of this action as it involves a Federal
20 question under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692.

22 || DATED: November 13, 2012

CARLSON & MESSER LLP

By /s/Stephen A. Watkins
David J. Kaminski, Esq.
Stephen A. Watkins, Esq.
Attorneys for Defendant
CLIENT SERVICES, INC.